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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re Applications of	)	MM Docket No. 92-309
LOCAL TELEVISION ASSOCIATES, INC.	)	File No. BPCT-911106KF
CHARLES FITZGERALD	)	File No. BPCT-920114KF
WEBBER/MOORE BROADCASTING COMPANY LIMITED PARTNERSHIP	)	File No. BPCT-920114KG
For Construction Permit for a New Commercial Television Station on Channel 35 at Jacksonville, North Carolina	)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Honorable Joseph Chachkin
Administrative Law Judge

SUPPLEMENT TO PETITION FOR LEAVE TO AMEND AND REQUEST FOR AUTHORITY FOR SATELLITE OPERATION

LOCAL TELEVISION ASSOCIATES, INC.

David D. Oxenford
Gregory L. Masters

Its Attorneys

FISHER, WAYLAND, COOPER
AND LEADER
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

Dated: April 6, 1993

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SUMMARY

With this Supplement, Local Television Associates, Inc. ("LTA") provides further information demonstrating that the operation of the new Jacksonville, North Carolina television station involved in this case as a satellite of station WFXI(TV), Morehead City, North Carolina, would presumptively serve the public interest.

This Supplement contains an abundance of economic data proving that a new full-service UHF station in the Greenville-New Bern-Washington, North Carolina market could not survive financially, and therefore that no rational businessperson would operate the station as a stand-alone facility. This issue is most extensively addressed in the attached study by a nationally known broadcast financial analysis firm. That study points out the weak economics of the ADI market and of the Jacksonville area specifically, and concludes that <u>even under unrealistically optimistic assumptions, a stand-alone Jacksonville station would lose over a million dollars in operational costs in its first five years</u>. The economic infeasibility of a stand-alone Jacksonville station also is demonstrated herein by local government studies detailing the economic hardship in the Jacksonville area, by analyses demonstrating that precious few third independent television stations exist -- let alone prosper -- in markets even larger than this one, and by a supplemental declaration by a media broker having extensive familiarity with this market.

This Supplement also provides further detail why LTA, despite having applied for the Jacksonville channel as a full-service station, has subsequently determined that full-service operation would be infeasible. Media competition in the market has increased markedly in intervening years, while the economy has only become worse. Not only has this decreased the prospects for success of a new full-service UHF independent, but this increased competition has made it all the more imperative that LTA seek to expand the currently marginal coverage of its existing station in the market. Under separate cover, the other Jacksonville applicants explain further their reasons for filing, and their subsequent determinations that operation of the Jacksonville station as a full-service facility is no longer an economically viable proposition, if ever it was.

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SUPPLEMENT TO PETITION FOR LEAVE TO AMEND AND REQUEST FOR AUTHORITY FOR SATELLITE OPERATION

Local Television Associates, Inc. ("LTA"), by its attorneys and pursuant to the Presiding Judge's Order, 93M-108 (released March 17, 1993), hereby supplements its February 1, 1993 Petition for Leave to Amend and Request for Authority for Satellite Operation ("Petition"). Specifically, this Supplement provides additional information demonstrating that operation of the new Jacksonville, North Carolina station here at issue as a satellite of WFXI(TV), Morehead City, North Carolina, is presumptively in the public interest.

Introduction

1. The Petition is part of a proposed universal settlement of this three-party comparative case. Under this settlement, the

Accordingly, and incorporating its prior Petition by reference, LTA provides such a further showing below.

Discussion

4. At the prehearing conference, the Presiding Judge's concerns about the satellite showing centered on two matters. First, there was a concern that there was insufficient economic data to support the satellite showing, particularly given the fact that the proposed station would serve a substantial number of persons -- a fact which could, on its face, seem to indicate that a full-service station could survive in the market. Second, the Judge questioned why the three applicants now before him had applied for the channel if in fact it could not be operated as a stand-alone facility. Answers to these concerns are set forth herein.

5. The first question, the economic viability of the station, is addressed in detail by several attachments to this filing. Most extensively, it is discussed in Exhibit A hereto, a declaration and study prepared by Susan Harrison of Harrison, Bond & Peçaro, a nationally known firm specializing in broadcast

operator. This clearly shows that the economic prospects of someone choosing to build the station are bleak.

6. Moreover, the assumptions used by Ms. Harrison were intentionally made overly -- indeed, unrealistically -- optimistic. The reality of broadcast operations for a stand-alone station on the channel would almost indisputably be much worse. Specifically, Ms. Harrison projects the station to operate at the same cost for five years, when in fact most stations face increased costs over time, as salaries and programming costs increase with the general cost of living. Moreover, she projects that the station will achieve a ratings level in the market (rated number 103 by Arbitron and 104 by Nielsen) not achieved by any independent station in any market smaller than number 77 (Las Vegas, Nevada). Not only is it optimistically assumed that these ratings will be achieved by a station which covers less than half of the area within its market with a Grade B signal, but Ms. Harrison assumes the station will immediately reach that level of ratings <u>on its first day of service</u>. The reality, of course, would be a gradual building of broadcast ratings over time. Given these facts, it is clear that the financial prospects of this station are incredibly dim.

7. One of the principal reasons for the dismal economic prospects of the station is the competition which already exists in the market. Exhibit B contains a breakdown of the commercial television stations serving ADI markets 75 through 103, compiled from the <u>1993 Television and Cable Factbook</u>. As shown therein, the Greenville-New Bern-Washington market already has five

licensed commercial television stations, two of which are unaffiliated with the three major networks. A full-service Jacksonville facility would thus be a sixth station in the market, and a third independent station. Yet of the 28 next larger markets, only five have more than five licensed stations. Moreover, in two of those five markets (#76, Paducah, Kentucky and #99, Lincoln, Nebraska), at least one of the stations operates as a satellite of another. Even more importantly, only two of these 28 markets have three or more full-service independent stations. These two ADIs are (i) the far larger Las Vegas, Nevada market (#77) and (ii) the El Paso, Texas market, which contains an abundance of Mexican-licensed and Hispanic network stations. Neither of these markets is comparable to Greenville-Washington-New Bern. All the other markets from 75-103 contain no more than two independent stations. As set forth above, one must go all the way to market #77, Las Vegas, before any non-Fox independent station garners substantial audience shares.[2/] See Exhibit A at 34-35.

8. The Commission's own satellite station precedent further supports the grant of satellite authority for the new Jacksonville station. In recent years, the Commission has granted authority for unbuilt television stations to operate as satellites in markets considerably larger than the one involved here, including the top 25 ADI of Denver, Colorado. See Eagle 22, Ltd., 7 FCC Rcd 5295 (1992) (Denver ADI, presently number

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2/ As set forth at page 34 of the Harrison study, Las Vegas market revenues are almost three times as large as those in the Greenville-Washington-New Bern market.

21); Horseshoe Bay Centex Broadcasting Co., 5 FCC Rcd 7125 (1990) (Austin, Texas ADI, presently number 66); Alexander E. Macpherson, 7 FCC Rcd 6019 (1992) (Paducah, Kentucky ADI, presently number 76). In each of those cases, as is the case here, the new station covered only a portion of the market and could not be truly competitive. The Commission has also approved the acquisition by a station in the Sacramento market (ADI number 19) of an unbuilt station in Merced, California, which is in the Fresno market (ADI number 56). Wade Axell, 7 FCC Rcd 4261 (1992). As in all of these cases, the unlikelihood of the activation of the channel as a full service station compelled grant of the satellite request.

9. At the prehearing conference, the Presiding Judge made reference to the showing made by the applicant in KMTR, Inc., 7 FCC Rcd 1025 (1992). In that case, the Commission granted an application for a new television station in the Eugene, Oregon ADI (currently market number 124), and allowed the new station to operate as a satellite of a commonly owned station in the market.

10. In KMTR, the applicant noted that Roseburg, Oregon, the satellite station's community of license, was a small community located on the fringe of the Eugene ADI. Similarly here, Jacksonville is a community of only some 28,780 persons. Jacksonville is located in Onslow County, which is along the Atlantic coast a considerable distance to the south of the center

of the market. <u>See</u> Exhibit C (map depicting the market and Jacksonville's location).[3/]

11. Additionally, the applicant in <u>KMTR</u> claimed that current economic conditions necessitated satellite operation of the new Roseburg station. Similar conditions exist with respect to Jacksonville. Onslow County, Jacksonville's home county, has suffered a severe economic decline in recent years. This is demonstrated in Exhibit D, an economic analysis prepared by the County's Economic Development Commission, contained as part of a grant proposal. Between July 1990 and May 1991, four Onslow County manufacturing plants closed, resulting in job loss for

capital improvements at Camp Lejeune are forecast to fall from the present annual level of $90 million to only five million dollars a year, which will have a devastating effect on the local construction trade.

12. The situation is much the same in adjacent Carteret County. As demonstrated in Exhibit E, two of that county's largest manufacturers closed in 1987, and their former premises remain unoccupied. In addition, within the past two years two more of Carteret County's key manufacturing plants cut their workforces substantially. To make matters worse, several years ago the county experienced a "Red Tide" resulting in severe dislocations to its fishing and tourism industries. Many of the jobs lost during the Red Tide still have not been replaced, and these losses -- coupled with a declining commercial fishing industry -- have increased unemployment to unprecedented levels. Carteret County has a seasonal economy similar to Onslow County, and Carteret County's annual wages and per capita income rank among the lowest in North Carolina. The county, home to the Cherry Point Marine Air Base, also faces serious uncertainty in light of defense cutbacks.

13. The Harrison study details other economic factors in the Greenville-New Bern-Washington market which show that a station here is unlikely to perform better than national averages. The population is substantially poorer and less well educated than national averages. Exhibit A at 9. Effective buying income and retail sales per household are well below national averages. Id. at 11. Job growth, health care

facilities and transportation availability also lag far behind most metropolitan areas. As set forth at p. 16 of the Harrison study, Jacksonville ranked 321st out of the 333 metropolitan areas ranked in the Places Rated Almanac, hardly a ringing endorsement of the local area.

14. LTA provided in its Petition a Declaration by Millard S. Younts, a media broker familiar with this market. Therein, Mr. Younts stated that based on his experience in attempting to sell other stations in the market and his overall knowledge of the market, no informed and rational businessperson would be interested in the operation of a new stand-alone UHF station in the market. Exhibit F contains a further Declaration by Mr. Younts, which sets forth in further detail the basis for his conclusion. Mr. Younts' opinion gains further support from the attached Harrison study and the numerous other economic facts contained in this Supplement.

15. With this kind of economic picture and national reputation, it is simply irrational to expect that anyone would come forward to build the station as a stand-alone facility. Given these facts, it is clear why a number of other construction permits issued for this market have gone unbuilt. See Petition at 8-9 for a history of those permits.

16. Like the applicants for those permits, the dismissing parties to this proceeding filed for the channel based on the lure of owning a television station -- without investigating the real costs involved and the prospects for success of the facility. Declarations explaining their reasons for filing are

being submitted today under separate cover. The two dismissing applicants, Fitzgerald and Webber/Moore, have previously stated in sworn declarations that they have determined that the local market cannot viably support an additional full-service station.

17. LTA filed for this facility only two years after commencing operations with WFXI(TV) in Morehead City, North Carolina. LTA committed to divest itself of WFXI(TV) at the time of filing, not because it believed that it could successfully operate the Jacksonville station in competition with WFXI(TV), but because it believed that this station could replace WFXI(TV). The license for WFXI(TV), because of its coverage limited to the extreme eastern portion of the market, could be returned to the Commission for cancellation, and would not likely ever be activated as a commercial station. Thus, it was never expected that both a Jacksonville station and WFXI(TV) could both operate successfully in the market.

18. LTA had believed that the Jacksonville station could replace WFXI(TV) as it had a location slightly more central in the market and, at the time of filing, WFXI(TV) was having difficulty reaching much of the market with its programming and with obtaining cable carriage in the western parts of its market. However, in the fourteen months between the filing of the Jacksonville application and the filing of the settlement papers in this proceeding, these limitations on WFXI(TV) have been overcome because of the Fox network programming of that station, and in light of the fact that certain northwestern areas of the market are being reached by a rebroadcast of parts of the

WFXI(TV) schedule on new independent station WYDO(TV), Greenville, North Carolina. Thus, operating the Jacksonville station instead of WFXI(TV) no longer makes the economic sense it did in November 1991, when the application was filed.

19. Moreover, the market has changed in the period since the filing of the application, making a difficult market even more so. The market, which had been rated in 1992 in the top 100 markets, has been decreased in size to market 103 by Arbitron, as one county has been reassigned to the Raleigh market because of local viewing habits there. As explained above, the local economy has been hit hard by defense cutbacks and plant closings. The television market revenues, forecast by Seltel, a national sales rep firm, actually decreased from 1991 to 1992, when political revenues, which will not reoccur in the next three years, are removed from the estimates.[4/] Moreover, three new FM stations have commenced operations in the market, and there are outstanding construction permits for two additional stations and pending applications for two more, which will increase competition for media advertising dollars. In addition, an already active local cable sales force has announced that it will become even more active by linking several systems by a fiber link, making regional sales more feasible.

20. These negative developments in the Jacksonville station's potential local advertising market not only dictate

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4/ Ms. Harrison's figures, which include political sales, show an increase from 1991 to 1992. However, her estimates show a drop the previous year. Thus, neither source shows healthy, growing television revenues in this market.

that Channel 35 could not be constructed independently, but also demand that a marginal station like WFXI(TV) provide a signal in the market competitive with the three high-powered, network-affiliated VHF facilities which are centrally located in the market, and are the only stations which provide over-the-air service to all counties within the ADI. Thus, given these recent developments in the market, and the fact that the competitors for the channel have reached similar conclusions about the viability of the Jacksonville station, LTA has concluded that the best use of that station is not as a replacement for WFXI(TV), but as an adjunct to it. In that way, both Morehead City and Jacksonville would have a local television outlet, addressing each community's respective needs and interests,[5/] but the stations could be run in an economically justifiable manner to ensure their survival. Since this arrangement serves the public interest, LTA submits that it should be approved. See Exhibit G, the Declaration of LTA President John Gainey supporting these assertions.

Conclusion

LTA believes that the supplemental showing herein is fully responsive to the Presiding Judge's concerns. Specifically, LTA has shown that based on area economic conditions, the structure of television markets considerably larger than the one involved

5/ Even under the satellite proposal, a main studio for the Jacksonville station would be maintained in that community. While the bulk of the station's programming will be a rebroadcast of WFXI(TV), the Jacksonville station will also run independent programming, including programs addressing the needs and interests of its service area.

here, and the Commission's own precedent, the new Jacksonville station could not survive as a full-service facility. LTA thus urges the Judge to approve the pending settlement and permit the operation of the Jacksonville station as a satellite of WFXI(TV).

Respectfully submitted,

LOCAL TELEVISION ASSOCIATES, INC.

By: ______________________
David D. Oxenford
Gregory L. Masters

Its Attorneys

FISHER, WAYLAND, COOPER
AND LEADER
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

Dated: April 6, 1993

AMENDMENT

CERTIFICATE OF AMENDMENT

I, John W. Gainey III, hereby amend the pending application of Local Television Associates, Inc. for a new television station at Jacksonville, North Carolina with the attached material.

John W. Gainey III Pres.
John W. Gainey III

Date: April 6, 1993

AMENDMENT

Amend the ownership of the applicant to specify that the permit will be held by Local Television Associates, Inc. The permit will not be held by Atlantic Ridge Telecasters, Inc., as was specified in a previous amendment, and Mr. Charles Fitzgerald will not be a principal of the permittee.

EXHIBIT A

Exhibit A

STUDY OF THE ECONOMIC VIABILITY OF OPERATING A TELEVISION STATION ON CHANNEL 35 AS A STAND-ALONE, FULL-SERVICE INDEPENDENT TELEVISION STATION SERVING THE GREENVILLE-NEW BERN-WASHINGTON TELEVISION MARKET

Susan D. Harrison having been duly sworn, upon oath states the following:

I am a principal of Harrison, Bond & Pecaro, a consulting firm specializing in financial and economic analyses for the broadcasting industry. Since starting this firm in 1986, I have stand-alone conventional independent television station[1] serving the Greenville-New Bern-Washington television market.

Summary and Conclusions

Having reviewed a variety of materials and performed a discounted cash flow analysis, I have reached the following conclusions:

1. As a stand-alone entity, Channel 35 will suffer a severe competitive handicap due to its inability to provide over-the-air service to viewers in nine of the fifteen counties in the Greenville-New Bern-Washington ADI[2].

2. Channel 35's sales effort will be hampered by this technical disadvantage, particularly since the other commercial stations in the market cover substantially greater portions of the ADI.

3. Channel 35 will operate in a market which is undergoing severe economic problems, and which falls below national averages in most economic indicators relevant to forecasting a television station's economic potential.

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1 That is, not affiliated with one of the three national television networks: ABC, CBS or NBC; not affiliated with FOX television; not operated as a Home Shopping Network outlet.

2 Arbitron, Inc., defines the Greenville-New Bern-Washington Area of Dominant Influence, or ADI, as Beaufort, Bertie, Carteret, Craven, Duplin, Greene, Hyde, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Tyrrell and Washington counties, North Carolina.

4. Even under the most optimistic set of assumptions, there is absolutely no reasonable likelihood that Channel 35 will be able to sustain itself financially as a stand-alone, full-service station.

It is further my opinion that, given the recent downturn in the marketplace for television station trading (which has not abated, despite rumblings of a national economic recovery), no prudent businessperson exists anywhere in the United States who would be willing to invest in the construction and start-up of Channel 35 as a stand-alone, full-service conventional independent operation, and no commercial broadcast lender exists in the country who would extend credit for that express purpose.

In making this assessment, I evaluated the following factors, among others:

- Channel 35's long-term potential advertising revenues, including an analysis of existing competition in the market.
- The station's likely operating costs.
- The cost of constructing the station.
- Whether, taking all these factors into account, the station could, even under very optimistic assumptions, generate a rate of return sufficient to cause a prudent investor to choose to build and operate it as a stand-alone, full-service conventional independent facility in the Greenville-New Bern-Washington television market.

In assessing the financial prospects for a start-up broadcasting facility, judgements must be made regarding future events. For example, estimates must be made of factors such as market growth, inflation, the station's likely audience share, and various other factors. It is common practice to make assumptions regarding these factors.

At a number of points in this analysis, I have made specific assumptions regarding the nature of Channel 35's likely performance as a stand-alone, full-service independent. It is my standard practice to make such assumptions so that their effect in no way artificially enhances the station's attractiveness as an investment opportunity. However, in the case of Channel 35, I was less "conservative" than usual. The assumptions I made were extremely optimistic, and, as such, had the effect of biasing the results *in favor of* the economic viability of a stand-alone, full-service Channel 35.

Methodology

The process by which this analysis has been undertaken is as follows:

1. Estimates were made of Channel 35's potential television advertising revenues.
2. Estimates were made of Channel 35's annual operating expenses.
3. The expense estimates were applied to the revenue estimates, permitting the calculation of the station's estimated operating cash flow[3].

[3] Operating cash flow has been used herein to reflect total revenues, less total operating costs, before depreciation, amortization, interest, taxes or any capital expenditures or principal repayment.